

Gray Area Retirees—Issues and Legislation

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Summary

The United States Department of Veterans Affairs (VA) provides a broad range of benefits and services to American veterans and to certain members of their families. In addition, the Department of Defense (DOD) offers a variety of benefits to veterans who are also military retirees. When members of the National Guard or the reserves who have not yet reached the age of 60 retire (usually after at least 20 years of service), they may not necessarily meet the statutory definition of “veterans” for VA purposes or be eligible for DOD health benefits. These military retirees are commonly known as Gray Area Retirees (GARs).

To be eligible for most VA benefits, the claimant must be a veteran, or in some cases, the survivor or dependent of a veteran. However, not every person who has served in the military is considered to be a “veteran” for the purposes of VA benefits. The concept of “veteran” is defined by federal statute and includes various criteria, such as discharge status, “active” service, time of service, and length of duty.

Section 705 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84) made TRICARE Standard (TS) coverage available for purchase by certain members of the retired reserve who are qualified for a non-regular retirement, but are not yet 60 years old (GARs). This program, known as TRICARE Retired Reserve (TRR), was launched on September 1, 2010, and is now fully operational. In 2011, a program was implemented that permits GARs to enroll in the TRR online, through a DOD website.

In the 112th Congress, S. 542, S. 1768, and H.R. 1003 would authorize space-available travel on military aircraft for GARs on the same basis as active-duty military personnel. S. 491 and H.R. 1025 would recognize service by certain persons in the reserves by honoring them with the status as veterans under law. However, such persons would not be entitled to any benefit by reason of such recognition.

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Introduction

The United States Department of Veterans Affairs (VA) provides a broad range of benefits and services to American veterans and to certain members of their families. In addition, the Department of Defense (DOD) offers a variety of benefits to veterans who are also military retirees. Retired members of the National Guard or the reserve components who have not yet reached the age of 60 and who have not been recently deployed to a combat theater,¹ however, are not entitled to the same federal benefits, such as health care, that other veterans and military retirees receive.² National Guard and reserve members may not necessarily meet the relevant statutory definition of “veterans” for VA benefit purposes,³ and retired members of the National Guard or reserve are not eligible for DOD benefits until they reach the age of 60.⁴ These National Guard and reserve retirees are commonly known as Gray Area Retirees (GARs). The National Defense Authorization Act of Fiscal Year 2010 (P.L. 111-84) provided TRICARE Standard (TS) coverage for certain members of the retired reserve⁵ who are qualified for a non-regular retirement, but are not yet 60 years old.

This report examines the current VA and DOD benefit eligibility for members of the National Guard and the reserves; the benefit status and situation of GARs; and legislation related to GARs.

Gray Area Retirees

Eligibility for VA benefits may vary significantly for certain members of the Guard and the reserves, as compared with members of the regular military, particularly at the time that a member of the Guard or reserves retires.

¹ The National Defense Authorization Act for Fiscal Year 2008 (NDAA; P.L. 110-181) extended the period of enhanced enrollment opportunity for health care eligibility provided to veterans who served in a theater of combat operations after November 11, 1989 (commonly referred to as “combat veterans” or “OEF/OIF veterans”), as follows:

Combat veterans who were discharged or released from active service on or after January 28, 2003, are now eligible to enroll in the VA health care system for five years from the date of discharge or release. This means that combat veterans who were originally enrolled based on their combat service, but later moved to a lower Priority Group (due to the law’s former two-year limitation) are to be placed back in the priority for combat veterans for five years, beginning on the date of their discharge or release from active service.

Note: the five-year enrollment period applicable to these veterans begins on the discharge or separation date of the servicemember from active duty military service, or in the case of multiple call-ups, the most recent discharge date.

Combat veterans who were discharged from active duty before January 28, 2003, but did not enroll in VA health care now have three years to enroll and receive care as combat veterans. This three-year period of enhanced eligibility began on January 28, 2008, and expired on January 27, 2011.

² For example, a member of the Guard or the reserves could retire at the age of 41 with 20 years of service. However, the retiree would not be eligible for certain federal benefits (e.g., health care and retirement pay) until 18 years later, when the retiree reaches the age of 60. This 18-year period is usually considered to be the “Gray Area.”

³ Title 38 of the *U.S. Code* provides the statutory criteria for the definition of “veteran” and the subsequent eligibility for VA benefits.

⁴ Under §§1074, 1076, and 1223 of Title 10 of the *U.S. Code*, members of the retired service are eligible for TRICARE Standard upon acquiring eligibility for retired pay at the age of 60.

⁵ Certain family members may also be covered under the program.

The National Guard and the Reserves—Background and Purpose

The Guard had its predecessors in the colonial militias with the concept of the “citizen-soldier,” who was called to service during times of need. Today, the Guard serves a two-fold function—it provides security and assistance on the home front and is available for military missions abroad. For example, the Guard was deployed in the wake of Hurricane Katrina in 2005, and many members of the Guard have served or are serving in Iraq and Afghanistan.⁶

The reserves of the U.S. Armed Forces are military organizations—such as the Army Reserve or the Navy Reserve—whose members usually perform a minimum number of military duty days per year and whose members may be “called up” for duty as required. The reserves enlarge the active-duty (full-time) military when their services are needed. These entities are known collectively as “the reserves,” the “reserve units,” or the “reserve components.”⁷

Career Pattern

Ordinarily, a member of the Guard or the reserves may retire after 20 years of service with his or her unit. Certain federal benefits for the retired member (which include health care and retirement pay) currently do not commence until the retiree reaches the age of 60. Depending upon the retiree’s age and length of service, the retiree could be as young as 37 years old, but he or she will not receive the federal retirement benefits until reaching the age of 60. This time period from retirement to the age of 60 is generally referred to as the “Gray Area,” and this category of retirees is generally referred to as “Gray Area Retirees.” This term is not defined by statute or regulations, but it generally refers to members of the Guard or reserves who have transferred to the retired reserve after 20 years (or more) of service with their unit and who have not reached the age of 60.

Most members of the Guard or the reserves who elect to remain in service will have served between 20 and 30 years. Upon retirement, the servicemember will transfer from the active reserve service to the retired reserve. The servicemember is still subject to “call up” to active duty. At the age of 60, the GAR is then usually entitled to DOD benefits similar to those of servicemembers who retire from active military service after at least 20 years. However, in many cases, GARs are not considered to be veterans under Title 38 for VA benefit purposes. A GAR carries a Military ID card marked “Ret,” maintains military base privileges, and usually keeps the commissary privileges that he or she had while on active reserve status. GARs are eligible for (1) VA disability compensation and VA health care for disabilities or injuries incurred while performing inactive duty for training, regardless of length of service; (2) VA home loan eligibility, as long as the retiree had six or more years of honorable service in the selected reserve; (3) VA burial and memorial benefits if the retiree is entitled to reserve retired pay at the time of his or her death; and (4) conversion of Servicemen’s Group Life Insurance (SGLI) to Veterans Group Life Insurance (VGLI).

Basically, before the age of 60, the GAR has the same benefits that he or she had before retirement, but without receiving pay.⁸ When the GAR reaches the age of 60, retirement pay and

⁶ The Guard’s website provides background and organizational information, see <http://www.nationalguard.mil/>.

⁷ The website of the Office of the Assistant Secretary of Defense for Reserve Affairs contains organizational and related information: <http://www.defenselink.mil/ra/>. Certain parts of the National Guard of the United States—the Army National Guard of the United States and the Air National Guard of the United States—are considered part of the reserves.

⁸ For a complete comparison between the benefits offered to a GAR and to a military retiree aged 60 or older receiving retired pay, see <http://www.ng.mil/news/archives/2009/03/Benefits.pdf>.

medical benefits begin. But, if the GAR is called back to active service, the GAR will regain eligibility for pay, medical benefits, and other service benefits during this period of active service. Generally, once a GAR reaches the age of 60, he or she will receive DOD benefits and privileges comparable to those of a “regular” military retiree, including retirement pay and medical benefits.

Spousal Survivor Benefits

GARs’ surviving spouses are eligible for annuities.⁹ Section 656 of the National Defense authorization Act for Fiscal Year 2000 (P.L. 106-65) provides authority for granting an annuity to certain surviving spouses of servicemembers who did not decline participation in the military Survivor Benefit Plan. This legislation provides coverage to surviving spouses of all GARs.

Benefits Provided by the VA and the DOD

Various benefits are provided by the VA to “veterans,” and other benefits are provided by the DOD to certain military retirees. These two benefit systems are examined below.

VA Benefits

Among the benefits extended to veterans through the VA are health care and related services, such as nursing homes, clinics, and medical centers; education, vocational training, and related career assistance; home financing; life insurance; burial benefits; benefits for certain family survivors; and financial benefits, including disability compensation and pensions.

To be eligible for most VA benefits, the claimant must be a veteran, or, in some cases, the survivor or the dependent of a veteran. Significantly, however, not every person who has served in the military is considered to be a “veteran” for the purposes of VA benefits. By federal statute, for VA benefit purposes, a “veteran” is defined as a “person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”¹⁰ Various criteria, however, including discharge status, “active” service, time of service (whether during a “time of war”), and length of duty are all factors considered in determining whether a former servicemember is a “veteran” for the purposes of VA benefits.¹¹ Two particular elements of these criteria—“active duty” and “length of service”—are often difficult for members of the Guard and the reserves to meet. As a result, these servicemembers, having not met the statutory threshold criteria for “veteran,” are often not eligible for VA benefits.

⁹ This situation occurs when a GAR dies before receiving retirement pay. However, his or her surviving spouse is eligible for this annuity/retirement benefit.

¹⁰ 38 U.S.C. §101(2); 38 C.F.R. §3.1(d). For a thorough explanation of the statutory criteria for eligibility, see CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, by Douglas Reid Weimer. Title 5 of the *U.S. Code* provides the criteria for assistance and preferences in securing federal employment for veterans (5 U.S.C. §2108). It should be observed that different criteria are used in these statutes (and for different purposes), and the determination of “veteran” status in Title 5 for employment preference does not determine “veteran” status for VA benefits under Title 38, and vice-versa. See CRS Report RS22666, *Veterans Benefits: Federal Employment Assistance*, by Christine Scott. In addition, state and local entities may have various (and differing) definitions and concepts of the term “veteran,” which may be utilized for employment preferences and other purposes.

¹¹ For more information, see CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, by Douglas Reid Weimer, pp. 2-7. Because each retiree’s military service, records, and categorization may be different, the retiree may not fit within the statutory categorization of “veteran.”

The “Active Duty” Requirement

In many cases, members of the Guard and the reserves may not have fulfilled the “active duty” requirement. Members of the Guard and reserves who served on regular active duty are eligible for the same VA benefits as other veterans.¹² An example of this situation would be a Guard member who was called up to serve in the Persian Gulf for 12 months, and at the end of that period would thus be considered to have served on active duty for that period of time. Otherwise, Guard and reserve duty is not considered “active duty” for benefits unless the servicemember performing this duty was disabled or died from a disease or injury incurred or aggravated in the line of duty.¹³

The “Length of Service” Requirement

Guard and reserve members must ordinarily serve a minimum of 24 continuous months on active duty to meet the “length of service” requirement to qualify for VA benefits.¹⁴ A former Guard or reserve member who has served for less than 24 months of continuous active duty may still qualify so long as the servicemember has served the “full period” for which he or she was “called to duty.” This requirement was fulfilled, for example, by Guard and reserve members who were called to active duty during the 1991 Persian Gulf War. These servicemembers satisfied the minimum length of service requirement, even though most did not serve for a full 24 months. But their orders reflected that they served the full period for which they were called to active duty.¹⁵

VA Determination on a Case-by-Case Basis

Although many Guard and reserve members may not appear to be eligible “veterans” for the purposes of VA benefits, certain exceptions and special circumstances may exist, which add to the complexity of the eligibility determination. As each servicemember’s military service may be different, and therefore may fit within certain case categories or exceptions, eligibility is usually determined by the VA on a case-by-case basis after reviewing the individual servicemember’s military service records. As the statutory definition of “veteran” is not precise or absolute, it provides the VA with some discretion in determining who may be considered a “veteran” for purposes of VA benefits.¹⁶

DOD Retiree Health Benefits

As with the VA’s system, the DOD’s military health system includes a health benefits program, generally referred to as “TRICARE.” TRICARE serves active duty servicemembers; National Guard and reserve members; retirees; and their families, survivors, and certain former spouses, worldwide. As a major component of the Military Health System, TRICARE brings together the health care resources of the uniformed services and supplements them with networks of civilian

¹² 38 U.S.C. §101(21)(A); 38 C.F.R. §3.6(b)(1).

¹³ 38 U.S.C. §101(21)(A); 38 C.F.R. §3.6(a). Inactive duty would include duty other than full-time duty, such as weekend assignments or part-time details.

¹⁴ 38 U.S.C. §5303A(b); 38 C.F.R. §3.12a(a)(1).

¹⁵ This was confirmed by VA Gen. Coun. Memorandum (March 14, 1991) (Activation of Reservists of Operation Desert Shield/Storm).

¹⁶ See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, by Douglas Reid Weimer.

health care professionals, institutions, pharmacies, and suppliers to provide access to health care services while maintaining the capacity to support military operations.¹⁷

Prior to the enactment of the National Defense Authorization Act of Fiscal Year 2010 (P.L. 111-84), GARs were usually not eligible for TRICARE health benefits until they became eligible for retirement pay at the age of 60 (at which time, they are no longer considered GARs). However, these individuals and eligible family members may purchase the TRICARE Retiree Dental Program (TRDP) before drawing retirement pay. Individuals who enroll in TRDP within 120 days of their official retirement date are not subject to a 12-month waiting period, which is otherwise required for certain TRDP benefits.

Members of the retired reserve who are receiving retirement pay but are not yet eligible for Medicare (generally those retirees between the ages of 60 and 64) are automatically eligible for TRICARE Standard¹⁸ or TRICARE Extra.¹⁹ They may also enroll in TRICARE Prime²⁰ if they live in an area where it is offered.²¹

Upon reaching the age of 65, reservists receiving retirement pay must enroll in Medicare Part B to retain TRICARE coverage, which converts to TRICARE for Life (TFL). TFL covers all TRICARE beneficiaries who are entitled to Medicare Part A and have Medicare Part B coverage based on age. There are no enrollment fees for TFL, and the catastrophic cap is \$3,000 per fiscal year per family. TRDP also remains available.

Legislation

Section 705 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84) (October 28, 2009) provided TRICARE Standard (TS) coverage²² for certain members of the retired reserve who are qualified for a non-regular retirement but are not yet 60 years old.

The TRICARE program allows retired reservists to purchase TRICARE coverage if “they are under the age of 60 and are not eligible for, or enrolled in, the Federal Employees Health Benefits (FEHB) program.” They are also required to be members of the retired reserve of a reserve component and qualified for non-regular retirement.²³ Detailed eligibility criteria are available on the TRICARE website.²⁴

In the 112th Congress, S. 542, S. 1768, and H.R. 1003 would authorize space-available travel on military aircraft for GARs on the same basis as active-duty military personnel. S. 491 and H.R. 1025 would recognize service by certain persons in the reserves by honoring them with the status

¹⁷ A person who is properly registered in the Defense Enrollment Eligibility Reporting System (DEERS) is automatically covered by TRICARE Standard. Eligible beneficiaries do not need to enroll for Standard coverage, nor take any other action; individuals who are otherwise eligible for TRICARE health care coverage are automatically covered under TRICARE Standard. For more information about the military health system, see CRS Report RL33537, *Military Medical Care: Questions and Answers*, by Don J. Jansen.

¹⁸ TRICARE Standard is a fee-for-service option.

¹⁹ TRICARE Extra is a preferred-provider option.

²⁰ TRICARE Prime is a managed option that relies primarily upon military providers and treatment facilities.

²¹ See CRS Report R41198, *TRICARE and VA Health Care: Impact of the Patient Protection and Affordable Care Act (PPACA)*, by Sidath Viranga Panangala and Don J. Jansen.

²² For an overview of TRICARE Standard, see <http://www.military.com/benefits/tricare/tricare-standard/tricare-standard-overview>.

²³ For an overview of TRICARE Retired Reserves, see <http://www.tricare.mil/pressroom/news.aspx?fid=656>.

²⁴ For more detail on TRICARE Retired Reserve, see <http://www.tricare.mil/mybenefit/home/overview/LearnAboutPlansAndCosts/TRICARERetiredReserve?>.

as veterans under law. However, such persons would not be entitled to any benefit by reason of such recognition.

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This report was originally written by Douglas Reid Weimer, an attorney in the American Law Division. All questions from congressional clients should be directed to the current author.

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